

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

JOHN LOUIS ATKINS, #02184778,	§	
	§	
Petitioner,	§	
	§	
v.	§	Case No. 6:23-cv-447-JDK-KNM
	§	
DIRECTOR, TDCJ-CID,	§	
	§	
Respondent.	§	

**ORDER ADOPTING THE REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

Petitioner John Louis Atkins, a Texas Department of Criminal Justice prisoner proceeding pro se, filed this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 to challenge a prison disciplinary conviction. The case was referred to United States Magistrate Judge K. Nicole Mitchell for findings of fact, conclusions of law, and recommendations for the disposition of the case. Docket No. 2.

On September 20, 2023, Judge Mitchell issued a Report recommending that the petition be dismissed with prejudice on its merits and that a certificate of appealability be denied. Docket No. 6. Petitioner filed written objections to the Report. Docket No. 11.

This Court reviews the findings and conclusions of the Magistrate Judge de novo if a party objects within fourteen days of the Report and Recommendation. 28 U.S.C. § 636(b)(1). In conducting a de novo review, the Court examines the entire record and makes an independent assessment under the law. *Douglass v. United Servs. Auto. Ass’n*, 79 F.3d 1415, 1430 (5th Cir. 1996) (en banc), *superseded on other*

grounds by statute, 28 U.S.C. § 636(b)(1) (extending the time to file objections from ten to fourteen days).

The Magistrate Judge recommends dismissal because Petitioner, who is not eligible for release on mandatory supervision, cannot establish any federal violation in connection with his disciplinary conviction that affects the fact or length of his incarceration. Docket No. 6 at 3–5. Accordingly, Petitioner does not raise any claim for which federal habeas relief would lie. *Id.* at 5.


Petitioner’s objection does not address the substance of the Magistrate Judge’s findings or recommendation. Instead, he asserts that the “Magistrate Judge had no jurisdiction to render the R&R” because she “proceded [sic] without proper authorization by [his] consent.” Docket No. 11. He urges that the Court should consequently “VOID the R&R on the jurisdictional alone.” *Id.*

Petitioner’s objection is unavailing. Pursuant to the Federal Magistrate Act of 1979 and the standard practice of this Court, this action was automatically referred to the undersigned Magistrate Judge as authorized by 28 U.S.C. § 636(b)(1). That statute gives this Court the authority to refer any non-dispositive, pretrial matter to the Magistrate Judge for determination and to designate a Magistrate Judge to conduct hearings and to submit proposed findings of fact and recommendations for the disposition of a matter to the District Judge. *Jackson v. Cain*, 864 F.2d 1235, 1242 (5th Cir. 1989). No consent from the parties is required for such referral. *Newsome v. EEOC*, 301 F.3d 227, 230 (5th Cir. 2002) (“The consent of the parties is not required under this section.”). Petitioner does not have the right to interfere with this Court’s

statutory authority to delegate those responsibilities to the Magistrate Judge under that statute. *See Roell v. Withrow*, 538 U.S. 580, 585 (2003) (referring to referrals under Section 636(b) as “nonconsensual referrals”); *Jackson*, 864 F.2d at 1242 (holding that “[n]o such consent is required” for referrals under Section 636(b)); *Ford v. Estelle*, 740 F.2d 374, 377 (5th Cir. 1984) (explaining that Section 636(b)(1) “allows a district court to refer to a magistrate without consent of the parties”). Accordingly, the Magistrate Judge’s actions have been in full compliance with the law and this Court’s referral order, and Petitioner’s sole objection lacks any merit.

Having conducted a de novo review of the Report and the record in this case, the Court has determined that the Report of the United States Magistrate Judge is correct, and Petitioner’s objections are without merit. The Court therefore **OVERRULES** Petitioner’s objections (Docket No. 11) and **ADOPTS** the Report and Recommendation of the Magistrate Judge (Docket No. 6) as the opinion of the District Court. Petitioner’s petition for habeas corpus is hereby **DISMISSED** with prejudice. Further, the Court **DENIES** a certificate of appealability. Any pending motions are **DENIED** as moot.

So **ORDERED** and **SIGNED** this **9th** day of **November, 2023**.


JEREMY D. KERNODLE
UNITED STATES DISTRICT JUDGE